P 18E

App. F. IX-4

PRESERVED

1935.

File No. 169-35

Serial Nos. 1-2

Previous References

Q17-332-34(1-4)
Σ. 256-35(4)

Letter References.

Σ. 169-35(3-6)
Σ 258-36(1-4)
Σ 358-40-1

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for Jan 36

SUBJECT.

Legal Opinion on Certain points Concerning the Status of nominees and assignees under Rule 22 of Public Branch Rules.

Sec'y

No H 5282 Q 10.1.36

WD 0360?—GPB—22,500—2-5-35

To the Secy. re: L.S. Committee

Forwards legal opinion —

3015 f 35
P

1979

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

Letter No 8176 & 8-11-35 from the Secy M.S.I. Committee. Requests to obtain further legal opinion on certain points concerning the status of nominees and assignees under Rule 22 of P.B.v. Rules

Subtd. Previous papers are put up. May this be sent to the Law dept for opinion?

MW 15/11

Sd Secy) 15/11/35

W 15/11.

asst Secy; Law
with Compliments) 16/11/35.

Please put up the form of the Policy referred to.

MW 16/11

FINANCIAL BRANCH 19 NOV. 1935 GENL & REV. SECTT.

FINANCIAL BRANCH NOV. 1935 19 NOV. 1935 GENL & REV. SECTT.

In Loss Cover

Subtd with a copy of the form

MW 19/11

Law dept (MW) 19/11

~~Copy of letter of the Secretary to the Committee and the Secretary to the Government of India in the Finance Department~~

125

Law
MW
19/11

NOTE—Contn Sheet.

WD 03594—GPB—30,000—13-7-35

3015

File No. of 193 General and Revenue Secretariat

The answers to the points raised in the last para of the P.W.D. are put as follows.

1) The status of a beneficiary under the Childrens Endowment table IV is only that of a nominee, and therefore the Changes proposed do not seem necessary.

2) From a perusal of the forms issued in such Cases, there is a clear Contract to pay the amount assured to the insured and not to the beneficiary. This is because that the insured is more Concerned with the bringing up of the beneficiary, and it is he that pays the premiums towards the insurance. In most of such Cases, the beneficiary may Continue to be a minor, even at the time of the maturity of the policy. It therefore seems ~~advisable~~ reasonable to pay the amount assured to the insured.

3) A rule may perhaps be added that it is not obligatory on the part of the Life insurance Co? to register the nominations in Case Covering ~~up~~ under this type of insurance.

125
Law

ISD 26/11

Serial No.

14 A policy granted under the Children's Endowment Scheme is in its essential terms a life insurance policy effectdd by the father for the benefit of his child. On the child attaining a particular age agreed upon the amounts due under the policy are by its terms payable to the insured, tha is, the father and in case he dies before the attainment of the age by the child, the policy becomes a fully paid up policy but maturing on the child attaining the prescribed age. In case the child dies, the premiums paid are returnable to the insured. A perusal of the terms of the policy shows that the child takes no vested interest in the policy and though it is said to be for the child's benefit, it creates no trust in its favour. Legally therefore the status of the child named in the policy is only that of a nominee and it is the insured that has full control and rights over the policy. In fact the money under the policy even at the death of the insured, forms part of his -- estate and it is his legal representatives that are entitled to sue on the contract and recover the money due under it. It is a well established principle in the law relating to Life Insurance

WD 03594—GPB—30,000—18-7-35

Insurance contracts that a person who is nominated by an assured in his policy of life assurance for receiving money due under it upon his death is not entitled to enforce his claim against the Company as he, though a nominee, is no party to the contract and no interest passes to him merely by reason of his being named in the policy. (Please see cleaver -VS- Mutual Reserve Fund Life Assurance (1892) 1 Q B 147 Shankar Viswanath -vs- Umabai 37 Bom 471, Krishnalal -vs-Pramila (1928) A.I.R. Cal 518- and Nadirshaw -vs- Times of India (1931) A.I.R. Bombay 300 - See also Oriental Life Assurance Co., -vs- Vantedda Ammuniraju reported in 35 Mad 162.)

I regret that in the opinion recorded by me on 27.6.1935, in G.F.332-34, some expressions used are capable of being interpreted otherwise and in particular the statement made therein that under the children's endowment policy, so long as the child is alive, the insured has no interest in the policy to assign or nominate, is incorrect. The money due under the policy being that of the insured and absolutely at his disposal there is nothing in law to prevent him from dealing with it as he likes. On his death the policy becomes part of the deceased's estate and consequently the acquittance of

Serial No.

of the nominee alone cannot legally discharge the liability of the Insurance Committee in respect of a policy of this class. This is very well illustrated in an English case reported in (1924) 2 Ch.348 and decided by that learned Judge, Mr.Justice Romer. The case arose out of an endowment policy taken out by Mr. Engelback for the benefit of his daughter Mary Noel then aged one month to mature on her attaining the age of 21, one of the conditions of the policy being that in case she died before attaining the age, all the premiums paid would be returned with interst to the insured, his executors, administrators or assigns. The father paid the premiums for about 8 years and then failed. Thereafter it was converted into a fully paid up policy for a reduced sum. The father died some four years after leaving a will by which his residuary estate came to belong to his three children in equal shares. When the policy matured, the money due thereunder was paid by the Insurance Company to the daughter named in the policy and obtained a receipt signed by her, but by a settlement the money was left in the hands of a firm of solicitors on account of whoever might be held to be entitled thereto. In the action that was begun on

WD 03594—GPB—30,000—13-7-35

on behalf of the residuary legatees, it was contended for the nominee that the policy was an endowment policy and not a life insurance policy, that the father was the trustee for the daughter and was contracting with the company on her behalf, though if she died under 21, he acted for himself and that apart from authority under the very terms of the contract, the money was payable to the daughter on her attaining the specified age, On behalf of the residuary legatees, it was however argued that the legal estate did not vest in the daughter, that the father did not constitute himself a trustee nor was there akk on the face of the policy any declaration of trust in favour of the daughter and that the contract was nothing more than a contract to pay a third party, which being a mere mandate, ended by the testator's death. It was also pointed out that the insurance company cannot get a good discharge by paying money in such circumstances to the nominee. Romer. J upheld the case on behalf of the residuary legatees, following the decision of the court of appeal in cleaver -vs- Mutual Reserve Fund Life Association (1892) 1 Q.B. 147 and it was decided that on the death of the assured, the policy moneys belong not to the daughter but to the estate of the assured and must be paid to his executors.

I would therefore answer the three questions raised by the Secretary in his letter of 8th November 1935 as follows:-

Serial No.		
	1. What legally is the status of a beneficiary under Table IV; is it that of a nominee or an assignee ? If the latter, what changes if any, would be necessary in the wording of Rules 22, 27 and 28 or of the terms of the Policy ?	Legally the status is that of a nominee and not that of an assignee. This does not therefore arise.
	2. Whether the amount assured by a Policy of this Class in respect of which, the beneficiay attains the stipulated age during the life time of the Insured, should be paid to the insured himself or to the beneficiay ? If to the latter, how are the policies already issued in the present form to be treated ?	It is to be paid, as per the terms of the policy to the insured if he is alive on the date of maturity ? not to the beneficiary. This does not therefore arise.

(3) As regards the third question raised regarding nominations under rule 22, the question as framed depends on the answers furnished to the four questions raised in the Secretary's letter of 15th April 1935. Since in the circumstances explained above, these answers are incorrect, I would revise the answers as follows :

(a) Whether the Secretary, Insurance Committee, is bound to register nominations in respect of policies issued under Table IV.	Yes.
(b) What the effect of such registration would be under existing conditions ?	Instead of the beneficiary named in the policy being the nominee, the registered nominee will be the nominee for the purposes of Rule. 22.

NOTE.—Contn. Sheet.

WD 03594—GPB—80,000—18-7-35

(c) Whether under the existing Rules and Policy terms, the acquittance fa of a beneficiary would legally discharge the liability of the Insurance Fund in respect of a Policy of this Class on its maturity subsequent to the death of the insured;

No. The acquitance of the legal representatives of the insured is necessary.

(d) Whether in view of the above any modification in the rules and policy terms is necessary to make the position clear ?

I think rule 22 has to be amended so as to make it clear that a mere nominee is not entitled to get payment in cases of the death of the insured unless the nominee happens to be the legal representative of the insured. The Policy amount after the death of the insured forms part of the assets of the deceased. In this view it is a point for consideration why it is necessary to provide for nominations in respect of any policy in the Public Branch. Instead of a nomination, an assignment on the condition that it is to become void if either the insured is living at the date of maturity or the assignee predeceases the insured, may perhaps be provided for. This is what is done in the Oriental Life Assurance Co.,Ltd.

3015

2450

Serial No.

It may be pointed out that nominations in the official Branch stand on an entirely different basis. There the policy money is free from attachment, the insured has no right to assign and the provisions of Section 130 T.P. Act do not apply to such policies as has been held in 1 "ys L.J. page 98. The nomination has therefore the force of a bequest which can be worked out without any consideration about the assets and liabilities of the insured.

125 Laws

Asst Secy) Fin W.C

24/12/35

5) Subtd. It is for consideration whether the above opinion may be communicated to the Secy M.S.L.D. Committee or the opinion of the Govt Advocate also be obtained.

26/12/35.

27/12

6) The present opinion may be communicated.

27-12-35.

7) Draft subtd

28/12

Issue

28/12/35.

Issued - NDH 5482 dt 10-1-36. to the Secy M.S.L.D. Committee forwards copy of Legal opinion furnished

30 DEC. 1935 SECTT.

B

NOTE.—Contn. Sheet

WD 03594—GPB—30,000—13-7-35

Copy of legal opinion sent with letter No
Fl. 8064/G.F. 332-34-2, dated
27th April 1935.
==========

Rule 22 does not apply to Policies granted under Table IV (Children's Endowment Scheme) so long as the child for whose benefit the Policy is issued is alive. The answers to the questions put by the Secretary are therefore as follows:-

(a) No.

(b) Does not arise.

(c) Yes.

(d) No .

---:oOo:---

Assistant Secretary,
Insurance Committee.

BSR-

C.7-169-35-1

M. S. L. I.
O. 20.

MYSORE STATE LIFE INSURANCE OFFICE.

In reply please quote
No. 8172
Encl.

FINANCIAL 1979 11 NOV. 1935 GENL & REV. SECTT.

BANGALORE,
Dated, the 8th NOVEMBER 1935.

FINANCIAL BRANCH 1979 12 NOV. 1935 GENL & REV. SECTT.

FINANCIAL SECTION 9 NOV. 35 No.

FROM

A. N. RAGHAVACHAR, Esq., M.A.,

Secretary, Mysore State Life Insurance Committee,
Bangalore.

TO

S. SHAMANNA, Esq., B.A.,
Financial Secretary to the Government of
His Highness the Maharaja of Mysore,
B A N G A L O R E.

SIR,

Referring to the legal opinion received with your letter No. Fl. 124 (1) G.F. 332-34-4 dated 4th July 1935 regarding the registration of nominations and assignments in respect of Policies issued under Table IV, I have the honour to state that according to the terms of the Policy and also of the Paid-up-Policy, (Vide Pages 30 and 32 of the Rules copy enclosed for reference), the assured amount becomes payable to the Insured, on the Beneficiary attaining the stipulated age. Further, the word "Nominee" used both in the Policy and the legal opinion referred to above, seems to favour the view that the Beneficiary under Table IV enjoys the status only of a nominee and not of an assignee under Rule 22 (Vide Page 11) and in accordance with that rule, the Beneficiary's interest in the Policy would accrue only on the death of the Insured. On the maturity of a Policy during the life-time of the Insured, the amount assured thereunder would, therefore, appear to become payable to the Insured and not to the Beneficiary as seems to be implied in the legal opinion.

If this view is correct, it would appear that the Beneficiary has no interest in the Policy so long as the Insured is alive and that the Insured cannot be denied the privilege either of effecting an assignment under Rule 22 or of nominating under Rule 23 (Vide Page 12) a fresh nominee in place of the first Beneficiary or of obtaining a loan from this office on the security of the Policy.

If

If, on the otherhand, it is held that the Beneficiary's interest in the Policy is that of an assignee under Rule 22, and hence superior to that of the Insured, the wording of the Policy will have to be amended and the practice of paying assurance amounts to the Insured according to the wordings of the present form of contract and even of granting cash or adjustment loans on the security of such Policies, may have to be discontinued. It may also be necessary in that case to add a proviso to Rule 22 to the effect that that rule would not apply to Policies issued under Table IV, so long as the Beneficiary is alive, (Vide legal opinion furnished with your letter No. Fl. 8064/G.F. 332-34-2 dated 27th April 1935 (copy enclosed for reference).

In the circumstances detailed above, I have to request you to kindly obtain and communicate further legal opinion on the following points:-

(1) What legally is the status of a Beneficiary under Table IV; is it that of a nominee or an assignee? If the latter, what changes, if any, would be necessary in the wording of Rules 22, 27 and 28 or of the terms of the Policy?

(2) Whether the amount assured by a Policy of this Class, in respect of which, the Beneficiary attains the stipulated age during the life-time of the Insured, should be paid to the Insured himself or to the Beneficiary? If to the latter, how are the Policies already issued in the present form to be treated?

(3) If the Secretary, Insurance Committee, is not bound to register nominations in respect of Policies issued under Table IV (Vide legal opinion dated 27th April 1935), is it not necessary to make a provision to that effect under Rule 22, as otherwise, there seems to be no provision in the rules or terms of Policy under which the Secretary will be acting in refusing to register a nomination or assignment? According to legal opinion furnished with your letter No. Fl. 8821/G.F. 372-33-2 dated 27th June 1934, the Secretary is bound to register all nominations sent under Rule 22.

I have the honour to be,

Sir,

Your most obedient servant,

G Kasturi Rao

FOR SECRETARY,
Insurance Committee.

BSR

Appendix F G—1]

SUBJECT.....

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Section G.7.

File No. 169-35

Serial No. 2

Diary No. of letter replied to.....

No. 52482 (1)

To

The Secy M.S.L.D. Committee

General and Revenue Secretariat

( )

the *193* .

Sir,

Date of issue 10/1/36

With reference to your letter no 81768 8-11-35 requesting to obtain further legal opinion on certain points concerning the status of nominees & assignees ~~to~~ under Rule 22 of P. Br. Rules, I am directed to enclose ~~copy~~ a copy of legal opinion furnished in the matter

Signed by .....

Date of issue of notice

I have to

28/12/35.

for H. Secy to Govt

List of enclosures.....

Copied by .....

Examined by.....

WD 03601—GPB—30,000—23-9-35

4. A policy granted under the Children's Endowment Scheme is in its essential terms a life insurance policy effected by the father for the benefit of his child. On the child attaining a particular age agreed upon the amounts due under the policy are by its terms payable to the insured, that is, the father and in case he dies before the attainment of the age by the child, the policy becomes a fully paid up policy but maturing on the child attaining the prescribed age. In case the child dies, the premiums paid are returnable to the insured. A perusal of the terms of the policy shows that the child takes no vested interest in the policy and though it is said to be for the child's benefit, it creates no trust in its favour. Legally therefore the status of the child named in the policy is only that of a nominee and it is the insured that has full control and rights over the policy. In fact the money under the policy even at the death of the insured, forms part of his estate and it is his legal representatives that are entitled to sue on the contract and recover the money due under it. It is a well established principle in the law relating to Life Insurance contracts that a person who is nominated by an assured in his policy of life assurance for receiving money due under it upon his death is not entitled to enforce his claim against the Company as he, though a nominee, is no party to the contract and no interest passes to him merely by reason of his being named in the policy. (Please see Cleaver -VS- Mutual Reserve Fund Life Assurance (1892) 1 Q.B. 147 Shankat Viswanath -vs- Umamai 37 Bom. 471, Krishnalal -vs- Pramila (1928) A.I.R. Cal. 518 and Nadirshaw -vs- Times of India (1931) A.I.R. Bom. 300 - See also Oriental Life Assurance Co., -vs- Vantedda Ammuniraju reported in 35 Mad. 182.)

I regret that in the opinion recorded by me on 27-6-1935 in C.F. 332-34, some expressions used are capable of being interpreted otherwise and in particular the statement made therein that under the children's endowment policy, so long as the child is alive, the insured has no interest in the policy to assign or nominate, is incorrect. The money due under the policy being that of the insured and absolutely at his disposal there is nothing in law to prevent him from dealing with it as he likes. On his death the policy

becomes

becomes part of the deceased's estate and consequently the acquittance of the nominee alone cannot legally discharge the liability of the Insurance Committee in respect of a policy of this class. This is very well illustrated in an English case reported in (1924) 2 Ch.348 and decided by that learned Judge Mr. Justice Romer. The case arose out of an endowment policy taken out by Mr. Engelback for the benefit of his daughter Mary Noel, then aged one month, to mature on her attaining the age of 21, one of the conditions of the policy being that in case she died before attaining the age, all the premiums paid would be returned with interest to the insured, his executors, administrators or assigns. The father paid the premiums for about 8 years and then failed. Thereafter it was converted into a fully paid up policy for a reduced sum. The father died some four years after leaving a will by which his residuary estate came to belong to his three children in equal shares. When thepolicy matured, the money due thereunder was paid by the Insurance Company to the daughter named in the policy and obtained a receipt signed by her, but by a settlement the money was left in the hands of a firm of solicitors on account of whoever might be held to be entitled thereto. In the action that was begun on behalf of the residuary legatees, it was contended for the nominee that the policy was an endowment policy and not a life insurance policy, that the father was the trustee for the daughter and was contracting with the company on her behalf, though if she died under 21, he acted for himself and that apart from authority under the very terms of the contract, the money was payable to the daughter on her attaining the specified age. On behalf of the residuary legatees, it was however argued that the legal estate did not vest in the daughter, that the father did not constitute himself a trustee nor was there on the face of the policy any declaration of trust in favour of the daughter and that the contract was nothing more than a contract to pay a third party, which being a mere mandate, ended by the testator's death. It was also pointed out that the insurance company cannot get a good discharge by paying money in such circumstances to the nominee. Romer Judge upheld the case on behalf of the residuary legatees, following the decision of the Court of appeal in cleaver -vs- Mutual Reserve Fund Life Associa-

tion

(1892) 1 Q.B.147 and it was decided that on the death of the assured, the policy moneys belonged not to the daughter ~~but to the daughter~~ but to the estate of the assured and must be paid to his executors.

I would therefore answer the three questions raised by the Secretary in his letter of 8th November 1935 as follows:-

1. What legally is the status of a beneficiary under Table IV: is it that of a nominee or an assignee? If the latter, what changes if any, would be necessary in the wording of Rules 22, 27 and 28 or of the terms of the Policy?	Legally the status is that of a nominee and not that of an assignee. This does not therefore arise.
2. Whether the amount assured by a Policy of this Class in respect of which, the beneficiary attains the stipulated age during the lief time of the Insured, should be paid to the insured himself or to the beneficiary? If to the latter, how are the policies already issued in the present form to be treated?	It is to be paid, as per the terms of the policy to the insured if he is alive on the date of maturity and not to the beneficiary. This does not therefore arise.

3. As regards the third question raised regarding nominations under rule 22, the question as framed depends on the answers furnished to the four questions raised in the Secretary's letter of 15th April 1935. Since in the circumstances explained above, these answers are incorrect, I would revise the answers as follows:-

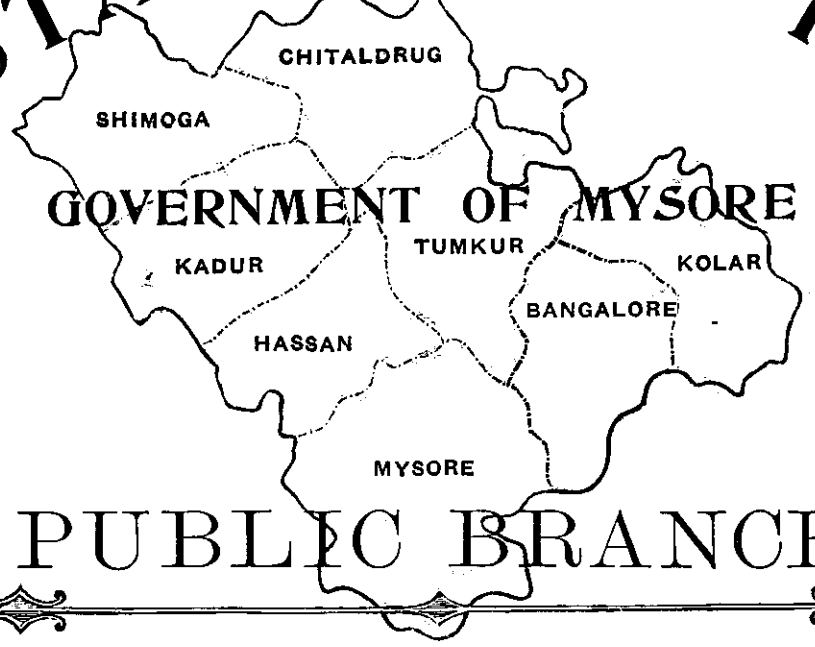
(a) Whether the Secretary, Insurance Committee, is bound to register nominations in respect of policies issued under Table IV.	Y e s .
(b) What the effect of such registration would be under existing conditions?	Instead of the beneficiary named in the policy being the nominee, the registered nominee will be the nominee for the purposes of Rule 22.
(c) Whether under the existing Rules and Policy terms, the acquittance of a beneficiary would legally discharge the liability of the Insurance Fund in respect of a policy of this class on its maturity subsequent to the death of the insured;	No. The acquittance of the legal representatives of the insured is necessary.
(d) Whether in view of the above any modification in the rules and policy terms is necessary to make the position clear?	I think rule 22 has to be amended so as to make it clear that a mere nominee is not entitled to get payment in cases of the death of the insured unless the nominee happens to be the legal representative of the insured

Th

The Policy amount after the death of the insured forms part of the assets of the deceased. In this view it is a point for consideration why it is necessary to provide for nominations in respect of any policy in the Public Branch. Instead of a nomination, an assignment on the condition that it is to become void if either the insured is living at the date of maturity or the assignee predeceases the insured, may perhaps be provided for. This is what is done in the Oriental Life Assurance Co., Ltd.,

It may be pointed out that nominations in the official Branch stand on an entirely different basis. There the policy money is free from attachment. The insured has no right to assign and the provisions of Section 130 T.P. Act do not apply to such policies as has been held in 1 Mys. L.J. Page 98. The nomination has therefore the force of a bequest which can be worked out without any consideration about the assets and liabilities of the insured.

MYSORE STATE LIFE INSURANCE



PUBLIC BRANCH

M.S.L.I.
P.B.—III-D.

POLICY No.....
ENDOWMENT FOR CHILD.

Whereas..... son of..... (hereinafter called the Insured) has contracted with the Government of Mysore for an endowment bonus of the sum of Rupees (:)..... for the benefit of..... (hereinafter called the nominee) and has deposited a Proposal and Declaration, dated the ..... day of ..... 19—, and signed by him, as the basis of such contract.

Now it is hereby declared that in consideration of the payment to the Secretary to the Mysore State Life Insurance Committee of Rupees..... being the first monthly, quarterly, or half-yearly instalment of the first annual premium of Rupees..... on the.....day of.....in the year 19 ..... and of the remaining instalments thereof and the subsequent annual premiums of Rupees..... to be paid commencing on the.....day of the month of..... .....in the year 19 .....and ending with the..... day of the month of..... in the year 19 .....in the manner prescribed in Rules framed by the Mysore Government in that behalf, the Secretary to the said Mysore State Life Insurance Committee shall be subject and liable to pay, on behalf of the Mysore Government, the said sum of Rupees..... to the said insured..... on satisfactory proof given of the attainment by the aforesaid nominee of the age.....years, provided that if the said insured die before the attainment by the said nominee of the age of..... ...years, this Policy shall become a fully paid-up policy for the full sum endowed maturing for payment on the attainment by the aforesaid nominee of the age of.....years and should the said nominee die before attaining the age of .....years, the amount of the premium paid in respect of the endowment shall be returned to the said insured or to his nominees by will or other document registered in the Office of the Secretary to the Insurance Committee, and failing such nominees, to his legal heirs after surrender of the Policy and after the production of satisfactory evidence of death in either case.

But this Contract is made subject to the following Proviso, *viz.*, it shall be void and the payment made by the Insured under it shall be forfeited if the statements contained in the aforesaid Proposal and Declaration be untrue.

The dates of birth of the Insured and the Nominee are hereby admitted to be..... and.....

BANGALORE,
The.....day of.....19 .

Secretary, Insurance Committee.

WD 464—GPB—3,000—4-12-29